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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 111

USCBP-2019-0024

RIN 1651-AB17

Customs Broker Verification of an Importer's Identity

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the U.S. Customs and Border Protection (CBP) regulations to require customs brokers to collect certain information from importers to enable the customs brokers to verify the identity of importers, including nonresident importers. CBP proposes these amendments, pursuant to section 116 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which directs CBP to promulgate regulations to require brokers to verify the identity of the importers who are their clients.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments via Docket No. USCBP-2019-0024.

- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, D.C. 20229-1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to

<http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, D.C. 20229-1177. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, Director, Commercial Operations Revenue Entry Division, Office of Trade, U.S. Customs and Border Protection, 202-325-6532, Randy.mitchell@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects

that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change. *See* ADDRESSES above for information on how to submit comments.

II. Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that individuals and business entities must hold a valid customs broker's license and permit in order to transact customs business on behalf of others. The statute also sets forth standards for the issuance of broker's licenses and permits, provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties, and provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker's license. Section 641 authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641.¹

The regulations issued under the authority of section 641 are set forth in part 111 of title 19 of the Code of Federal Regulations (CFR) (19 CFR part 111). Customs brokers serve many functions when acting on behalf of their clients, which include resident and nonresident

¹ The Homeland Security Act of 2002 generally transferred the functions of the U.S. Customs Service from the Treasury Department to the Secretary of the Department of Homeland Security (DHS). *See* Pub. L. 107-296, 116 Stat. 2142. The Act provides that the Secretary of the Treasury retains customs revenue functions unless delegated to the Secretary of DHS. The regulation of customs brokers is encompassed within the customs revenue functions set forth in section 412 of the Homeland Security Act. On May 15, 2003, the Secretary of the Treasury delegated authority related to the customs revenue functions to the Secretary of DHS subject to certain exceptions. *See* Treasury Order No. 100-16 (Appendix to 19 CFR Part 0). Since the authority to prescribe the rules and regulations related to customs brokers is not listed as one of the exceptions, this authority now resides with the Secretary of DHS.

importers. Customs brokers file information about their clients' merchandise and transactions with CBP. Customs brokers also track shipments, pay duties and fees to CBP, and keep current documents and records about the business they transact on behalf of their clients, all to help their clients comply with Federal import and export laws. *See* 19 CFR part 111 subpart C.

However, before a customs broker may transact customs business on behalf of a client, the broker must obtain a valid power of attorney (POA). 19 CFR 141.46. A POA authorizes the customs broker to become that client's agent and to prepare and file the necessary customs documents on their behalf.

A. Current POA Regulations

In the customs broker context, a valid POA is the written appointment of the broker as the true and lawful agent of the principal (*i.e.*, client) allowed to transact customs business on behalf of the principal. The regulations governing POAs are set forth in 19 CFR part 141 subpart C.

A POA may be executed for a specified part of the principal's business (limited power of attorney) or all of the principal's customs business (general power of attorney). *See* 19 CFR 141.31(a). Pursuant to 19 CFR 141.32, POAs can be executed through various means. CBP Form 5291 may be used to establish a power of attorney. If CBP Form 5291 is not used, a limited POA must be executed in the same manner and as explicit in its terms as CBP Form 5291. 19 CFR 141.32. A general POA with unlimited authority may be executed in any format. *See* 19 CFR 141.32.

A POA issued by a partnership is limited to a period not to exceed two years from the date of execution. 19 CFR 141.34. All other POAs may be granted for an unlimited period of time. 19 CFR 141.34.

A valid POA requires the principal to provide only limited information. The principal is required to provide:

- (1) A statement from the principal authorizing the customs broker to act as the principal's agent and for the customs broker to file entry/entry summary in the principal's name for a shipment;
- (2) The name of the individual or the authorized representative of the sole proprietorship, partnership, or corporation executing the POA; and
- (3) The name and address of the individual or business on whose behalf the POA is being executed.

See 19 CFR 141.32; 141.36-.39.

B. Customs Brokers' Current Practice for Verifying Importer's Identity

While only a limited amount of information is required for a valid POA, the majority of customs brokers currently require additional information when a POA is obtained from an importer, which is used by the broker to verify the importer's existence and identity. Brokers require this additional information and have initiated processes and procedures to validate an importer's identity in order to protect the broker's business interests, reduce identity theft, and help to prevent the use of shell² or shelf³ companies to further a business fraud scheme.

Additional information that a broker might request includes, but is not limited to, the registration of the importer's business with a state government and the Articles of Incorporation under which that business is formed.

² A shell company is a company without active business operations or significant assets, which may be used illegitimately to disguise business ownership or operations.

³ A shelf company is a company which was created and maintained by legal means, but is left dormant for a period of time before its sale to a buyer, which may serve to conceal the buyer's identity and history of business transactions so as not to appear as a new business entity.

CBP provides non-binding guidance on how brokers can validate importers when they obtain a POA. For example, CBP recommends that a broker should, whenever possible, do the following:⁴

- (1) Complete POAs in-person and review personal identification (driver's license, passport, etc.);
- (2) Check applicable websites to verify the business registration with State authorities;
- (3) Confirm business's trade or fictitious names that may appear on the POA;
- (4) Verify that the importer's name, importer number, and Employer Identification Number (EIN) (also known as the Federal Tax Identification Number) on the POA match what is in CBP's Automated Commercial Environment (ACE);
- (5) Check whether an importer is named as a sanctioned or restricted person or entity by the U.S. Government.

Since the collection and verification of any additional information from the importer is voluntary, certain brokers do not require any additional information. As a result, an atmosphere of "broker shopping" has been created where an importer that does not wish to provide this additional information might refuse to provide the information to one broker in the hopes that another broker will not ask for that information. If the second broker does not request the additional information, that broker, with minimal knowledge about the importer, transacts customs business on the importer's behalf leading to the possible use of shell or shelf companies, revenue loss, increased security risks with the goods being imported into the United States, and an uneven playing field for brokers.

⁴ See U.S. Customs and Border Protection, "Validating the Power of Attorney" for comprehensive list of recommendations. Last published May 25, 2018. Available at <https://www.cbp.gov/trade/programs-administration/customs-brokers/validating-power-attorney>.

C. Section 116 of TFTEA

On February 24, 2016, Congress enacted the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), Section 116, Public Law 114-125, 130 Stat. 122 (19 U.S.C. 4301 note), which amended section 641 of the Tariff Act of 1930 (19 U.S.C. 1641). Section 116 of TFTEA, *Customs Broker Identification of Importers*, specifically requires the Secretary to promulgate regulations setting minimum standards to: (1) identify the information that an importer, including a nonresident importer, is required to submit to a customs broker and that a broker is required to collect in order to verify the identity of the importer; (2) identify reasonable procedures that a broker is required to follow in order to verify the authenticity of the information collected from the importer; and (3) require the broker to maintain records of the information collected by the broker used to substantiate the importer's identity. Section 116 also empowers the Secretary to assess a monetary penalty for each violation for a broker that fails to collect the information, as well as revoke or suspend the license or permit of the broker.

III. Discussion of Proposed Amendments

CBP proposes to amend the CBP regulations to standardize the process by which customs brokers verify the identity of their clients, specifically importers and nonresident importers. These proposed regulations illuminate, for the international trade community and the public in general, the important role customs brokers have in verifying prospective clients and in ensuring the quality and integrity of the information they keep. When brokers verify the *bona fides* of clients, CBP is better assured that importers are conducting legitimate trade transactions. By formalizing the verification process and requiring that a reverification process be carried out by brokers every year, CBP believes that a broker's knowledge of its importer client would be improved. This improved broker knowledge could allow for commercial fraud prevention and

revenue protection and help prevent the use of shell or shelf companies by importers who attempt to evade the customs laws of the United States. Preventing the use of shell or shelf companies by importers would help reduce instances of a misclassification of merchandise to avoid duties, protect against intellectual property rights (IPR) violations, reduce antidumping/countervailing duty (AD/CVD) infractions, and reduce the importation of unsafe merchandise.

As the importer's and nonresident importer's agent, the customs broker is uniquely situated to collect the information necessary to authenticate their identity. CBP has determined that it is most efficient for the broker to collect and verify this information at the time the POA is obtained because the broker must both verify the client's identity and obtain a valid POA before transacting customs business on behalf of the client.

CBP is proposing to add a new section, 111.43, entitled *Importer identity verification*, to title 19 of the CFR to establish the identity collection criteria and to create a required verification process of importer and nonresident importer clients. These proposed regulations set forth the minimum requirements a customs broker must meet to verify the importer's identity prior to transacting customs business on behalf of the importer or nonresident importer client. As discussed above, most customs brokers already meet or exceed these minimum requirements. Customs brokers may continue to exceed the requirements in proposed section 111.43, regarding the collection of information and documents, or conducting research about a client.

Proposed paragraph (a) describes the general scope of the requirements for customs brokers to collect, verify, and maintain the information necessary to authenticate the identity of their clients.

Proposed paragraph (b) provides definitions for this section. In accordance with section 116(a)(i)(4) of TFTEA, the term “importer” is defined as one of the parties that qualifies to be an importer of record under 19 U.S.C. 1484(a)(2)(B) and “nonresident importer” is defined as an importer of record that is not a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; or a partnership, corporation, or other commercial entity that is not organized under the laws of a jurisdiction within the customs territory of the United States (as such term is defined in General Note 2 of the Harmonized Tariff Schedule of the United States) or in the Virgin Islands of the United States.⁵ The definition of the term “client” is the importer or nonresident importer of record who is seeking or employing the services of a customs broker to transact customs business on behalf of the importer or nonresident importer of record. The definition of the term “grantor” is the individual executing the power of attorney on behalf of the client.

A. Minimum Information that the Customs Broker is Required to Collect from the Client

Proposed paragraph (c) of section 111.43 identifies the information that the customs broker is required to collect from the client at the time the POA is obtained by the broker. The broker collects this information to verify the client’s identity.

At the time the POA is obtained by the broker, the broker must collect, at a minimum, the following information from the client, if applicable:

- (1) The client’s name;
- (2) For a client who is an individual, the client’s date of birth;

⁵ We note that the definition for “nonresident importer” provided by Congress in section 116 of TFTEA differs from the definition of “nonresident” in 19 CFR 141.31 governing POAs. CBP does not discuss these differences in this notice of proposed rulemaking (NPRM) because the differing definitions of “resident” and “nonresident” in 19 CFR part 141 do not influence whether a broker is required to obtain a POA from a client on behalf of which it transacts customs business.

- (3) For a client that is a partnership, corporation, or association, the grantor's date of birth;
- (4) For a client that is a partnership, corporation, or association, the client's trade or fictitious names;
- (5) The address of the client's physical location (for a client that is a partnership, corporation, or association, the physical location would be the client's headquarters) and telephone number;
- (6) The client's email address and business website;
- (7) A copy of the grantor's unexpired government-issued photo identification;
- (8) The client's Internal Revenue Service (IRS) number, employer identification number (EIN), or importer of record (IOR) number;
- (9) The client's publicly available business identification number (*e.g.*, Data Universal Numbering System (DUNS) number, etc.);
- (10) A recent credit report;
- (11) A copy of the client's business registration and license with state authorities; and
- (12) The grantor's authorization to execute power of attorney on behalf of client.

The broker must collect all the information that is applicable to that particular client. Some information might not be applicable to a client depending on whether the client is an individual, partnership, corporation, or association. For example, a small business might not have a business website; or a client who is an individual would not have a business registration and license with state authorities or a publicly available business identification number.

Additionally, if certain foreign jurisdictions do not provide credit reports, the broker is not required to collect a recent credit report from that client.

Under current practice, most brokers already collect all of the above applicable information from the client in the ordinary course of business. Most brokers currently require this information to ensure that the client is not concealing his or her identity, misusing another business owner's identity, or using a shell or shelf corporation to further a business fraud scheme. By requiring all of the applicable information above from all of the broker's clients, the proposed rule would also eliminate the ability of prospective clients to "broker shop."

B. Procedures that a Customs Broker is Required to Perform to Verify the Information Collected

CBP is proposing procedures for a customs broker to use to verify the authenticity of the information collected from its clients. Proposed paragraph (d) of section 111.43 requires customs brokers to verify all the information collected from the client, under proposed paragraph (c), to ensure accurate identification of the client.

As explained in Section A. above, the broker must collect all the information set forth in proposed paragraph (c) that is applicable to that client. The broker would be required to verify each of the data points (*i.e.* client's name, address, etc.) that the broker collects from that particular client. The means of verification that the customs broker uses for each data point, however, are at the broker's discretion. There are various methods of verification that would satisfy CBP's requirement that the broker verify each data point that the broker collects. The means of verification that CBP recommends for each data point are set forth below and include in-person verification, review of the proper evidence of the grantor's authorization to execute the POA, and/or research performed using various federal agency, state government, and publicly

available data sources. The broker must use as many of the recommended verification means as necessary to be reasonably certain of the client's identity.

In addition to verifying each data point collected, the broker would be required to check if the client is a sanctioned or restricted person or entity, or if the client is suspended or debarred from doing business with the U.S. Government.

Under the proposed rule, for any prospective client, the customs broker would be required to perform this verification before transacting customs business on the client's behalf. For existing clients with a POA issued by a partnership, brokers would have two years to verify this information and three years for all other existing clients.

1. The client's name, address, telephone number, email address, business website, trade or fictitious names

A customs broker could verify the client's name, address, telephone number, email, website, and trade or fictitious names, if applicable, through various means. A customs broker could use the Automated Broker Interface (ABI) to access ACE to verify a client's information. This means of verification is only available for a broker to access an existing client's information for transactions where the broker represented the client.

The broker could alternatively check the client's unexpired government-issued photo identification, the state licensing database or use open-source mapping. Customs brokers may also conduct research using reputable business information databases, individual state databases, and credit reporting entities or any other public or private database which provides accurate, timely, and relevant information about the client.

To verify the client's address, the broker could use various navigation and mapping functions available on public websites to verify the location. Warning signs could include an

incomplete or inaccurate address, or providing only a post office box address. To verify the telephone number, the broker could verify whether the number is a landline as opposed to a cell phone and could use return call verification to ensure that the number is accurate. To verify the email address, the broker could ensure that there is a return email message.

If applicable, the broker could visit the client's place of business in-person to verify its existence and the client's identity. During this in-person visit, the broker would be looking for any possible indication that the client's identity is not what he or she provided; that the business is defunct or nonexistent; or that the company is a shell or shelf company. To verify a business website, the broker could check the depth of the website, the business universal resource locator (URL), and the viability of any links provided.

2. The client's or grantor's date of birth

There are various ways that a customs broker could verify the client's or grantor's date of birth. The broker could perform an in-person review of the client's or grantor's unexpired government-issued photo identification to verify the date of birth. Alternatively, a broker could use individual state databases or open-source software.

3. The grantor's unexpired government-issued photo identification

The customs broker can perform an in-person review of the grantor's unexpired government-issued photo identification such as a passport or driver's license. During this in-person verification, the broker would be looking for any possible indications that the grantor's identity is not what he or she provided, or that there is fraud. Alternatively, the broker may conduct research using reputable databases to establish the veracity of the government-issued photo identification.

4. The client's IRS number, EIN, or IOR number

A customs broker could use federal government databases or the client's tax forms to verify the client's IRS, EIN, or IOR number. The broker could also use the ABI to access ACE to verify an existing client's IRS number, EIN, or IOR number. This means of verification is only available for a broker to access an existing client's information for transactions where the broker represented the client. Alternatively, the broker could conduct research using reputable public or private databases and websites, such as www.freeerisa.com, which is a private website that provides free access to all Employee Retirement Income Security Act (ERISA) form 5500s filed with the Department of Labor over the past two years.

5. The client's publicly available business identification number

If the client provides a non-government issued business identifier, the broker can use the associated database to verify the relevant aspects of that client's identification. For example, if the client provides its DUNS number, the broker could use the Dun and Bradstreet website at www.DNB.com to verify the client's DUNS number, company name, address, and telephone number.

6. A recent credit report

To check the client's credit report, the broker would check with a nationally recognized credit reporting entity. When checking the client's credit report, warning signs could include declarations of bankruptcy, and any delayed payment history. If the client informs the broker that a credit report cannot be provided because its jurisdiction does not provide credit reports, the broker must verify this by checking the address of the client's physical location.

7. The client's business registration and license with state authorities

A broker could use individual state databases to verify the business registration and license.

8. The grantor's authorization to execute power of attorney on behalf of client

A broker is required to confirm that the grantor has the authority to execute the POA. When a representative appears on behalf of the client, the representative would be required to provide evidence of his or her authorization to sign the POA. This evidence should be notarized whenever possible; however, the person whose signature is required is dependent on the type of business. To determine the type of evidence required, the broker would review the business's public filings, for example, the articles of incorporation, to determine who holds the key positions. For a corporation, the evidence would be a corporate officer providing certification on the entity's letterhead. For a limited liability company (LLC), the evidence would be the managing partner or member providing certification on the entity's letterhead. For a partnership, authorization would be the general and/or managing partner providing certification on the entity's letterhead. For a sole proprietorship or individual, evidence of authorization would consist of a certification, notarized by the sole proprietor or individual, stating that the representative was authorized to sign on behalf of the individual or the sole proprietor.

9. Check if the client is a sanctioned or restricted person or entity by the U.S.

Government or if the client is suspended or debarred from doing business with the U.S. Government

The broker would be required to check to determine if the client is a sanctioned or restricted person or entity, or if the client is suspended or debarred from doing business with the U.S. Government. The broker could check this information through any of the following websites: www.sam.gov, a U.S. government website that may be used to search public records

for company registrations; <https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>, which is a U.S. Department of Treasury website identifying Office of Foreign Assets Control (OFAC) sanctioned companies and individuals; or https://build.export.gov/main/ecr/eg_main_023148, which is a consolidated screening list identifying entities that have been sanctioned by U.S. Department of Commerce, International Trade Administration.

C. Requirement to Implement Policies, Procedures and Internal Controls

Proposed paragraph (e) of section 111.43 requires customs brokers to implement policies, procedures, and internal controls to verify a client's identity before transacting customs business on behalf of that client. While most customs brokers already have such policies, procedures, and internal controls in place to collect and verify this information, this requirement is to ensure that all brokers implement these policies, procedures, and internal controls so that brokers are required to collect the required information from the client, and to ensure that the broker has established policies and procedures to verify and reverify the information.

D. Recordkeeping Requirements

Section 116 of TFTEA requires that the regulations also set minimum standards for customs brokers to maintain records of the information used to substantiate the client's identity. Accordingly, proposed paragraph (f) requires all customs brokers to make, retain, and update records containing the information the brokers collected to verify the client's identity.

1. Current Recordkeeping Requirements

Customs brokers must make, retain, and update certain records of their transactions with their clients and must comply with all recordkeeping requirements. For customs brokers, the relevant recordkeeping provisions are in part 111 and part 163 and each broker must comply with the provisions of those parts when maintaining records that reflect on his or her transactions as a broker. 19 CFR 111.21 and 163.2(d). Part 163 governs the maintenance, production, inspection, and examination of records, in general. Part 111 sets forth the specific recordkeeping requirements applicable to customs brokers, and the additional records that each customs broker must make and maintain, and make available for CBP examination.

Pursuant to part 111, customs brokers are required to keep current records of account reflecting all their transactions as a broker, and keep and maintain copies of all correspondence and other records relating to their customs business. 19 CFR 111.21. A broker is not required to file a POA with CBP but must retain the POA as part of his or her records and make it available to representatives of the Department of Homeland Security (DHS).⁶ *See* 19 CFR 141.46. Customs brokers must maintain all these records for the required retention periods, in a manner that allows CBP to readily examine them, and pursuant to an allowable method of storage. *See* 19 CFR 111.25 and 163.5. These records, except for POAs, must be retained for at least five years after the date of entry. *See* 19 CFR 111.23 and 163.4. POAs must be retained until revoked, and revoked POAs and letters of revocation must be retained for five years after the date of revocation or for five years after the date the client ceases to be an “active client” as defined in section 111.29(b)(2)(ii), whichever period is later. *See* 19 CFR 111.23 and 163.4.

⁶ Subpart C of 19 CFR part 111 provides that the POA and other records must be made available to representatives of the Department of the Treasury; however, pursuant to the Homeland Security Act of 2002 and Treasury Order No. 100-16 (Appendix to 19 CFR Part 0), this was delegated to representatives of the Secretary of DHS as opposed to representatives of the Department of the Treasury. *See* Pub. L. 107-296, 116 Stat. 2142.

The proposed regulations add additional records to 19 CFR part 111 that the customs broker must make, retain, update, and have readily available for CBP examination.

2. Retention of Identification and Verification Records

Proposed paragraphs (f)(1) and (2) of section 111.43 set forth the minimum identification and verification records that customs brokers must retain. At a minimum, customs brokers must retain the information required by proposed paragraph (c), including any identification records, which consists of the information presented to the broker used to identify the client as well as any certifications the client makes. Customs brokers must also retain verification records of the means and documents relied on to verify the client's identity as required by proposed paragraph (d) and each record must indicate which information required pursuant to proposed paragraph (c) was verified by those means and documents. At a minimum, for the verification records, customs brokers must retain descriptions of any documents relied upon, any non-documentary methods, any results of measures undertaken, and any resolution of discrepancies as well as who performed the verification and the date the verification was performed. Brokers must indicate in the verification records which information required pursuant to proposed paragraph (c) was not collected from the client because it was inapplicable to that particular client.

3. Records Must be Readily Available for CBP Examination

The identification and verification records collected by the broker must be retained in accordance with 19 CFR 111.23 and be made available upon request by CBP for examination. The period of retention for the identification and verification records shall be the same as for POAs. *See* 19 CFR 111.23 and 163.4.

4. Updating the POA, Identification and Verification Records

Proposed paragraph (f)(4) requires customs brokers to implement procedures to ensure the accuracy, timeliness, completeness, and relevancy of any POA and any information about the client. These procedures must include a requirement that customs brokers update their records annually with any changes to the client, POA, or the information in the records, and reverify the client's identity.

The customs broker would update this information with new information or records received through either the client or through the broker's independent research. Customs brokers must update their information on an annual basis about any client and its business to ensure that the information they have is timely, accurate, complete, and relevant, and they must reverify the client's identity annually using the procedures set forth in proposed section 111.43(d).

Depending on the client, maintaining the information could include setting up news alerts about the client, confirming with a client the accuracy of information, or setting up automatic searches in specific databases. This ensures the quality and integrity of the information in the POA, and in the identification and verification records.

E. Penalties for Failure to Meet the Requirements

Section 116 of TFTEA amended section 641 of the Tariff Act of 1930 (19 U.S.C. 1641) to authorize the Secretary, at his or her discretion, to hold any customs broker liable if the broker fails to collect the required information for a monetary penalty not to exceed \$10,000 for each violation and to revoke or suspend a license or permit of the customs broker pursuant to the procedures set forth in section 641(d). Further, it holds that the penalty shall be assessed in the same manner and under the same procedures as the monetary penalties provided for in section 641(d)(2)(A). *See* 19 U.S.C. 1641(d)(2)(A). The provisions relating to assessment of a

monetary penalty under sections 641(b)(6) and (d)(2)(A), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(6) and (d)(2)(A)), are set forth in 19 CFR 111, subpart E.

Proposed paragraph (g) sets forth the conditions under which CBP may assess a monetary penalty and the maximum amount that a penalty may be assessed for. CBP may, at its discretion, assess a monetary penalty for a broker's failure to collect, verify, secure, retain, update, or make available for inspection the information in this section in an amount not to exceed \$10,000 per client. CBP could also choose to revoke or suspend the customs broker's license or permit in accordance with 19 U.S.C. 1641(d)(2)(B).

F. Timing of Verifications

Proposed paragraph (h) of section 111.43 provides the different timing requirements for verifications based on whether it is a prospective or existing client. This is to allow customs brokers that are not already collecting, verifying, and maintaining the information, additional time to start complying with the requirements for existing clients.

For prospective clients, customs brokers would be required to comply with proposed 19 CFR 111.43 as of the effective date of the final rule. A customs broker would not be permitted to begin transacting customs business on behalf of that client until the broker collected the required information and verified the client's identity. The broker would also be required to reverify the client's identity on an annual basis.

For existing clients with a POA issued by a partnership, customs brokers would have two years from the effective date of the final rule to verify the client's identity, and to update the necessary identification and verification records. This is because, as discussed above, unlike all other POAs, a POA issued by a partnership is limited to a period not to exceed two years from

the date of execution. *See* 19 CFR 141.34. Brokers would have to reverify the client's identity on an annual basis after the initial verification.

For all other existing clients, customs brokers would have three years from the effective date of the final rule to verify the client's identity, and to update the necessary identification and verification records. The three-year period is to allow brokers adequate time to verify existing client's identities pursuant to the new regulatory requirements taking into account the number of existing POAs and the number of hours per existing POA that the verification process will take (*see* Section IV. Executive Orders 13563, 12866, and 13771 for more detailed information).

Brokers would have to reverify the client's identity on an annual basis after the initial verification.

IV. Executive Orders 13563, 12866, and 13771

Executive Orders 13563 ("Improving Regulation and Regulatory Review") and 12866 ("Regulatory Planning and Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs") directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

This rule is not designated a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. As this rule is not a significant regulatory action, it is exempt from the requirements of Executive Order 13771. *See* OMB’s Memorandum titled “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). The regulatory amendments in this rule are the result of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (P.L. 114–125). This rule’s annualized net regulatory cost is \$11.7 million using a 7 percent discount rate and 2017 U.S. dollars. CBP has prepared the following analysis to help inform stakeholders of the impacts of this proposed rule.

1. Need and Purpose of Rule

CBP is one of several agencies that are responsible for issuing regulations governing the importation of goods into the United States. As this process is complex and involves compliance with numerous requirements ranging from agricultural safety to intellectual property rights, to the payment of appropriate duties and fees, CBP licenses customs brokers to assist importers with the importation process. As brokers are knowledgeable about the legal requirements and often have a great deal of visibility into their clients’ businesses, they are key partners to CBP in preventing fraud and ensuring that the correct amount of revenue is collected. However, brokers’ knowledge of their importer clients can vary as there is no current requirement that standardizes the collection and verification of broker’s information about their clients. Most brokers verify their clients’ information prior to conducting business with them, even absent a requirement to do so, but some do not and there is no universal standard for this verification. CBP has for many years provided guidance on this matter, but it is non-binding, and not all

brokers follow it. We note that CBP's guidance closely follows industry best practice standards that many brokers have been following for years and CBP's guidance standardizes and publicizes the best practices. CBP does not have evidence indicating the guidance changed industry's behavior. As such, brokers who properly verify their importers impose a higher burden on themselves and their clients than brokers who do not properly verify their clients. Also, importers who intend to commit fraud or are otherwise reluctant to share their information likely gravitate toward brokers who do not thoroughly verify their clients' information. This puts brokers who properly verify importers' identities at a competitive disadvantage and makes it easier for fraudulent importers to remain undetected.

Section 116, *Customs Broker Identification of Importers*, of TFTEA requires CBP to prescribe regulations governing the customs broker identification of importers. This proposed rule would satisfy this requirement by setting minimum standards for importers to provide the information and for customs brokers to collect this information and verify the identity of their importer or nonresident importer clients. The definition of the term "client" is the importer or nonresident importer of record who is seeking or employing the services of a customs broker to transact customs business on behalf of the importer or nonresident importer of record. The definition of the term "grantor" is the individual executing the power of attorney on behalf of the client. This regulation would reduce fraud by helping to eliminate the use of shell or shelf companies, protect U.S. Government revenue, and ensure level competitiveness among brokers.

2. *Background*

Each year, approximately 350,000 importers actively transact customs business with CBP through one of approximately 2,093 permitted customs brokers.⁷ By regulation, each importer is required to have a Power of Attorney (POA) with the broker before the broker may transact customs business on behalf of the client. In addition to assisting the importer with its filings, the broker has an important function in preventing fraud. As an importer's agent and CBP-licensed entity, the broker is uniquely situated to verify specific data on its importer and nonresident importer clients. The most timely and efficient way for a broker to request identity-verifying information is to do so at the point of the POA development. A valid POA is the written appointment of the broker as the true and lawful agent of the principal (*i.e.*, client) allowed to transact "customs business" in the name of that principal. The broker's own professional business interest and continuing obligation to demonstrate reasonable care involves determining that a POA is valid. Currently, the information required for a valid POA is limited to:

- (1) A statement from the principal authorizing the broker to act as the principal's agent and for the customs broker to file entry/entry summary in the principal's name for a shipment;
- (2) The name of the individual or authorized representative of the sole proprietorship, partnership, or corporation executing the POA; and
- (3) The name and address of the individual or business on whose behalf the POA is being executed.

As noted previously, the vast majority of customs brokers verify their clients' identity and industry groups have established best practices for doing so over the years. While there is no current requirement for brokers to verify their client's information prior to transacting customs

⁷ Source: Email correspondence with CBP's Broker Management Branch, Office of Trade [hereinafter referred to as CBP's Broker Management Branch], on August 15, 2017.

business on their behalf and only a limited amount of information is required for a valid POA, the majority of brokers currently require importers to provide them with certain additional information when a POA is obtained from an importer, which is used by the broker to verify the importer's existence and identity. This includes, but is not limited to, the registration of the importer's business with a state government and the Articles of Incorporation under which that business is formed. As this validation is important to prevent fraud and to protect a broker's business interests, CBP provides non-binding guidance on how brokers can validate importers when they obtain a POA. For example, CBP recommends that a broker should, whenever possible, do the following:⁸

- (1) Complete POAs in-person and review personal identification (driver's license, passport, etc.);
- (2) Check applicable websites to verify the business registration with State authorities;
- (3) Confirm business's trade or fictitious names that may appear on the POA;
- (4) Verify that the importer's name, importer number, and Employer Identification Number (EIN) (also known as the Federal Tax Identification Number) on the POA match what is in CBP's Automated Commercial Environment (ACE); and
- (5) Check whether an importer is named as a sanctioned or restricted person or entity by the U.S. Government.

This proposed rule standardizes the process by which brokers verify the identities of their importer clients by requiring that the broker collect specified identity-verifying information from the client at the time the POA is obtained and mandating procedures for the broker to verify the

⁸ Source: U.S. Customs and Border Protection, "Validating the Power of Attorney." Last published May 25, 2018. Available at <https://www.cbp.gov/trade/programs-administration/customs-brokers/validating-power-attorney>. Accessed May 31, 2018.

importer client's identity. Since CBP has determined that it is most efficient for brokers to collect this information and verify at the time the POA is obtained, this analysis uses the number of POAs created and existing to determine when the importer client's identity must be verified pursuant to this proposed rule's requirements.

According to CBP's Broker Management Branch and conversations with members of the trade community, including one of the major broker associations and some individual brokers, for the vast majority—about 95 percent—of POAs obtained by brokers, the broker has sufficiently verified the importer client's identity, a process that takes about 2 hours per POA.⁹ The 2 hour time burden can be divided into four major categories which include time for recordkeeping. Brokers who sufficiently verify their clients' identity spend approximately 40 minutes to check state or local business status via appropriate channels, 20 minutes to check their clients' business profile via organizations such as Dun and Bradstreet¹⁰, 40 minutes to access and review credit reports, and 20 minutes for internet research on the client's company. CBP requests comment on these estimates.

CBP estimates that approximately 100,000 new POAs are created annually when an importer either enters into a relationship with a broker for the first time or the particulars of the POA change and a new one is needed.¹¹ Therefore, CBP estimates that brokers currently spend approximately 190,000 hours per year validating 95 percent of the importer clients' identities at the time the POA is obtained. It also takes time for importers to provide their information to

⁹ Source: Email correspondence with CBP's Broker Management Branch on August 15, 2017, and numerous conversations with the trade in August 2017. The exact percentage of customs brokers that do not properly verify importers and nonresident importer clients is unknowable, as no broker will readily admit that it is not adequately verifying importer and nonresident importer information.

¹⁰ Source: Dun and Bradstreet. Get a Dun & Bradstreet DUNS number. <https://www.dnb.com/duns-number/get-a-duns.html>. Accessed March 28, 2019.

¹¹ Source: Email correspondence with CBP's Broker Management Branch on August 16, 2017, and March 27, 2018. The actual number of new POAs varies each year. In 2015, there were 84,520 new POAs, in 2016 there were 101,945, and in 2017 there were 101,110.

their brokers for a POA and the additional information required to verify the client's identity. Based on conversations with the trade community, CBP expects that it would take each importer approximately 1 hour to provide the broker with this verifying information. Accordingly, CBP estimates that importers currently spend approximately 95,000 hours per year gathering the necessary information to complete a POA and the additional information required to verify the client's identity.

3. Impacts of Rule

CBP proposes to formalize the process by which customs brokers verify importers and nonresident importer clients. This proposed rule would require the broker to collect specified information from the importer client and for the broker to verify the information from importers before it begins working under a new POA allowing the broker to transact customs business on behalf of the client.¹² In addition, within three years of the effective date of this proposed rule being finalized,¹³ brokers would also need to verify this information from existing clients.¹⁴ Additionally, brokers must continue to make and retain identification and verification records. This requirement would be enforceable according to the recordkeeping requirements of current broker regulations in 19 CFR part 111 and part 163. Finally, brokers will now be required to reverify the client's identity and update their records annually with any changes to the client, POA, or information in the records.

¹² Many brokers currently collect more information than what this proposed rule requires and they may continue to do so. This proposed rule simply establishes a minimum threshold of information that the client must provide and that the broker must verify.

¹³ For any existing client with a POA issued by a partnership, the broker also must verify the client's identity. Existing clients with partnership POAs will need to have their identities verified within two years from the effective date of this proposed rule being finalized and reverified every year thereafter. However, according to subject matter experts from CBP's Broker Management Branch, partnership POAs represent less than 1% of active POAs, though we lack data on the precise number of partnership POAs. To the extent partnership POAs are affected, it will increase broker costs by a small amount because they may require verification sooner than estimated.

¹⁴ Source: Email correspondence with CBP's Broker Management Branch on May 17, 2017.

The information that the customs broker would now be required to collect, at minimum, from the importer client under this proposed rule is as follows, if applicable:

- The client's name;
- For a client who is an individual, the client's date of birth;
- For a client that is a partnership, corporation, or association, the grantor's date of birth;
- For a client that is a partnership, corporation, or association, the client's trade or fictitious names;
- The address of the client's physical location (for a client that is a partnership, corporation, or association, the physical location would be the client's headquarters) and telephone number;
- The client's email address and business website;
- A copy of the grantor's unexpired government-issued photo identification;
- The client's Internal Revenue Service (IRS) number, Employer Identification Number (EIN), or Importer of Record (IOR) number;
- The client's publicly available business identification number (*e.g.*, DUNS number, etc.);
- A recent credit report;
- A copy of the client's business registration and license with state authorities; and
- The grantor's authorization to execute power of attorney on behalf of client.

Importer clients can obtain a DUNS number without cost and already report their DUNS number on CBP Form 5106. Brokers can verify the DUNS number online for free. The time it takes to do this is included in the estimated time to verify an importer client's information.

The broker must collect all the information that is applicable to that particular client. Some information might not be applicable to a client depending on whether the client is an

individual, partnership, corporation or association. For example, a small business might not have a business website; and a client who is an individual would not have a business registration and license with state authorities or a publicly available business identification number.

Additionally, certain foreign jurisdictions do not provide credit reports; accordingly, if the address of the client's physical location is located in one of those jurisdictions, the broker is not required to collect a recent credit report from that client.

Once customs brokers collect this data from importers and nonresident importers, brokers would need to check to determine whether the importer client is named as a sanctioned or restricted person or entity by the U.S. Government, or if the client is suspended or debarred from doing business with the U.S. Government, and would need to verify all the information collected from the importer client using various federal agency, state government, and publicly available data sources. The means of verification are at the customs broker's discretion. The broker must use as many of the recommended verification means as necessary to be reasonably certain as to the client's identity. Some of the tools that are recommended for verifying this information include:

- A check of the appropriate websites to determine whether the client is named as a sanctioned or restricted person or entity by the U.S. Government, or if the client is suspended or debarred from doing business with the U.S. Government;
- An in-person review of the grantor's unexpired government-issued identification;
- An in-person client meeting;
- An in-person visit of the client's place of business;
- A review of the client's Articles of Incorporation; and

- A query of publicly available information, business information and credit reporting entities, Federal, state, and local databases or websites and any other relevant trade or business sources.

As previously stated, conscientious brokers already require information from the importer or nonresident importer client in order to verify the client's identity. According to CBP's Broker Management Branch and conversations with the trade community, for approximately 5 percent of POAs, the brokers do not require most or any of this additional information and the importer clients' identities are not currently verified or are only minimally verified.¹⁵ As a result of this rule, all brokers will be required to verify all of the specified information collected from the client to verify the client's existence and identity for all POAs granted by importers and nonresident importer clients and this information will need to be reverified annually. CBP analyzes the costs and benefits of these new requirements over a 5-year period of analysis spanning from 2019 to 2023.

4. *Costs*

Costs to Brokers

Brokers currently have approximately 350,000 POAs with importer clients, for which brokers would now need to verify the client's identity under this rule within three years of the effective date of this proposed rule being finalized. CBP assumes that brokers would verify the importer client's identity for one-third of these existing POAs each year beginning in 2019—or about 116,666 each year from 2019 to 2021—to satisfy this rule's new verification requirement

¹⁵ Source: Email correspondence with CBP's Broker Management Branch on August 15, 2017. The exact percentage of customs brokers that do not properly verify importers and nonresident importer clients is unknowable because no broker will readily admit that it is not adequately verifying importer and nonresident importer information.

(see Table 1).¹⁶ These existing verifications would each take approximately 2 hours and can be divided into four distinct time-burden categories that were identified earlier.^{17,18} There is a time cost of \$59.52 each, according to CBP's assumed hourly time value for customs brokers of \$29.76.^{19,20} Based on the historical number of POAs created each year, CBP estimates that 100,000 new POAs would be created each year between 2019 and 2023 (see Table 1). CBP estimates that in the absence of this rule, brokers would have verified 95 percent of the importer clients' identities for new POAs—or 95,000 POAs—while the remaining 5 percent—or 5,000—new POAs would have the clients' identities go unverified based on historical estimates. According to CBP's Broker Management Branch, this rule's verification requirements would not increase the time burden for the 95 percent of instances where brokers verify the importer client's identity for each new POA. The specific information brokers currently require may be different than the information required under this rule, but we estimate that it takes approximately two hours to verify either set of data. As such, this rule will have no additional

¹⁶ Source: Email correspondence with CBP's Broker Management Branch on August 15, 2017.

¹⁷ The two hours includes the time to implement policies, procedures and internal controls for identity verification, and to keep records containing the information used to verify the importer.

¹⁸ Source: Email correspondence with CBP's Broker Management Branch on August 15, 2017.

¹⁹ 2-hour time burden for broker to verify information of the client's identity for an existing POA x \$29.76 hourly time value for customs brokers = \$59.52 time cost.

²⁰ CBP bases the \$29.76 hourly time value for customs brokers on the Bureau of Labor Statistics' (BLS) 2017 median hourly wage rate for Cargo and Freight Agents (\$20.11), which CBP assumes best represents the wage for brokers, by the ratio of BLS' average 2017 total compensation to wages and salaries for Office and Administrative Support occupations (1.4801), the assumed occupational group for brokers, to account for non-salary employee benefits, and rounded. Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, "May 2017 National Occupational Employment and Wage Estimates, United States-Median Hourly Wage by Occupation Code: 43-5011." Updated March 30, 2018. Available at https://www.bls.gov/oes/2017/may/oes_nat.htm#43-0000. Accessed March 26, 2019. The total compensation to wages and salaries ratio is equal to the calculated average of the 2017 quarterly estimates (shown under Mar., June, Sep., Dec.) of the total compensation cost per hour worked for Office and Administrative Support occupations divided by the calculated average of the 2017 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category. Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. Employer Costs for Employee Compensation Historical Listing March 2004 - December 2018, "Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004-2018 by Respondent Type: Office and administrative support occupations." Available at <https://www.bls.gov/web/ecec/ececqrtn.pdf>. Accessed March 26, 2019.

time burden to do the initial validation of the importer client's identity for the POA. The remaining 5 percent of brokers who do not currently verify the client's identity would incur a two-hour time burden for the verification of the importer client's identity for a POA under this rule,²¹ at an added time cost of \$59.52 per new POA according to CBP's assumed hourly time value for customs brokers.²²

Table 1. Projected Number of POAs Requiring Broker Verification with Rule

Year	Existing POAs Requiring Identity- Verification	New POAs Requiring Identity- Verification	Total POAs Requiring Identity- Verification
2019	116,667	5,000	121,667
2020	116,667	5,000	121,667
2021	116,666	5,000	121,667
2022	0	5,000	5,000
2023	0	5,000	5,000
Total	350,000	25,000	375,000

To estimate the total time cost for brokers to verify existing importer clients' identities, CBP multiplies the projected number of existing POAs requiring identity-verification during the period of analysis shown in Table 1 by the \$59.52 time cost to complete each identity-verification of an existing client by measuring the existing POAs. Accordingly, CBP finds that brokers would incur undiscounted costs totaling \$20.8 million to verify existing clients' identities from 2019 to 2023 following this rule's implementation (*see* Table 2). Brokers who do not already conduct client identity verifications would sustain a total time cost of \$1.5 million for verification of the importer client's identity based on their \$59.52 added time burden and their

²¹ Source: Email correspondence with CBP's Broker Management Branch in March 2018. The 100,000 figure is a rounded average of the number of POAs that were filed in 2015 (84,520), 2016 (101,945), and 2017 (101,110).

²² 2-hour added time burden for broker to verify information of the importer's identity for a new POA x \$29.76 hourly time value for customs brokers = \$59.52 time cost.

projected number of client identities verified measured by the number of projected POAs over the period of analysis (*see* Table 1 and Table 2). Altogether, the total undiscounted cost of this rule to brokers would measure \$22.3 million from 2019 to 2023.

Table 2. Total Cost for Brokers to Verify Client’s Identity for Existing and New POAs with Rule (Undiscounted 2017 U.S. Dollars)

Year	Time Cost to Verify Existing POAs	Time Cost to Verify New POAs	Total Time Cost for Brokers to Verify Existing and New POAs
2019	\$6,944,020	\$297,600	\$7,241,620
2020	\$6,944,020	\$297,600	\$7,241,620
2021	\$6,944,020	\$297,600	\$7,241,620
2022	\$0	\$297,600	\$297,600
2023	\$0	\$297,600	\$297,600
Total	\$20,832,000	\$1,488,000	\$22,320,000

Additionally, as a result of this rule, customs brokers will need to update their records and reverify on an annual basis that the POA information, and the identification and verification records for their importer clients is accurate. According to CBP’s Broker Management Branch, there are approximately 350,000 active importers of record (IORs) in any given year and that is not expected to change significantly—on average any new IORs are offset by IORs that become inactive.²³ Brokers will now have to verify all 350,000 existing client’s identities as measured by the existing POAs within three years of the effective date of this proposed rule being finalized and reverify the client’s identity annually thereafter. As discussed earlier, we expect brokers to do the initial verification evenly over the course of the first three years (*see* Table 1). The reverifications, then, will lag the initial verifications by a year. As the new importers are offset by importers who become inactive, brokers will need to reverify 350,000 existing clients’ identities each year, after the initial 3-year verification window. Table 3 shows the number of

²³ Source: Email correspondence with CBP’s Broker Management Branch on April 12, 2018.

verifications we estimate for each year. These verifications would each take approximately 45 minutes (.75 hours) to complete,²⁴ at a time cost of \$22.32 each, according to CBP's assumed hourly time value for customs brokers of \$29.76.²⁵ Table 3 shows the estimated costs of this reverification. The total undiscounted cost to verify and update recordkeeping requirements for existing and prospective clients as measured by existing and new POAs is \$23,436,022 over the period of the analysis.

²⁴ Source: Email correspondence with CBP's Broker Management Branch on March 20, 2018.

²⁵ 0.75-hour time burden for broker to verify information of the importer client's identity for an existing POA x \$29.76 hourly time value for customs brokers = \$22.32 time cost.

Table 3. Total Cost for Brokers to Verify and Update Recordkeeping Requirements for Existing and New Clients with Rule (Undiscounted 2017 U.S. Dollars)

Year	Total POAs Requiring Annual Reverification	Total Time Cost to Reverify POAs
2019	0	\$0
2020	116,667	2,604,007
2021	233,334	5,208,015
2022	350,000	7,812,000
2023	350,000	7,812,000
Total	1,050,000	23,436,022

Costs to Importers

In addition to its costs to brokers, this rule would impose costs on the broker's existing and prospective importer clients now required to provide additional identity-verifying data to brokers for their existing and new POAs. Based on conversations with the trade community, CBP assumes that each existing POA corresponds to a unique importer of record.²⁶ As a result, CBP estimates that 350,000 existing importer clients would provide identity-verifying data to brokers for 350,000 existing POAs within three years of the effective date of this proposed rule being finalized (*see* Table 1). CBP expects that it would take each importer approximately one hour to provide the broker with this identity-verifying information, at a time cost of \$29.76 according to CBP's assumed hourly time value for importers of \$29.76.^{27,28} Considering this

²⁶ Some importers have several importer of record numbers, but each requires its own POA.

²⁷ 1-hour time burden for importer to provide broker with the required information to verify the importer's identity for an existing POA x \$29.76 hourly time value for importers = \$29.76 time cost.

²⁸ CBP bases the \$29.76 hourly time value for importers on the Bureau of Labor Statistics' (BLS) 2017 median hourly wage rate for Cargo and Freight Agents (\$20.11), which CBP assumes best represents the wage for importers, by the ratio of BLS' average 2017 total compensation to wages and salaries for Office and Administrative Support occupations (1.4801), the assumed occupational group for importers, to account for non-salary employee benefits, and rounded. Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, "May 2017 National Occupational Employment and Wage Estimates, United States - Median Hourly Wage by Occupation Code: 43-5011." Updated March 30, 2018. Available at https://www.bls.gov/oes/current/oes_nat.htm. Accessed March 26, 2019. The total compensation to wages and salaries ratio is equal to the calculated average of the 2017 quarterly estimates (shown under Mar., June, Sep., Dec.)

time cost and the projected number of existing POAs where the importer's identity must be verified during the period of analysis (*see* Table 1), CBP finds that importers would incur a total cost of \$10.4 million to provide identity-verifying information to their brokers for existing POAs (*see* Table 4). For new POAs where the importer's identity must be verified, CBP estimates that importers already provide most of the additional identity-verifying information required in this rule to brokers for 95 percent—or 95,000—of new POAs each year. As stated above, while the specific information brokers require currently may vary, it is generally very similar to what this rule requires that the brokers collect. Hence, CBP assumes these importers would not incur an added burden to provide identity-verifying information to their brokers with this rule beyond what they already bear. For the remaining 5 percent—or 5,000—of POAs where the importer's identity is not currently verified, this rule would require brokers to collect such information from their clients. Like with existing POAs, CBP believes that it would take each importer approximately one hour to provide the broker with this identity-verifying information, at a time cost of \$29.76 according to CBP's assumed hourly time value for importers of \$29.76.²⁹ By applying this time cost to the 5,000 new POAs where the importer's identity would not be verified absent this rule, CBP estimates that some importers would sustain undiscounted costs totaling \$0.7 million over the period of analysis from this rule's identity-verifying data

of the total compensation cost per hour worked for Office and Administrative Support occupations divided by the calculated average of the 2017 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category. Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. Employer Costs for Employee Compensation Historical Listing March 2004 – December 2018, “Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004-2017 by Respondent Type: Office and administrative support occupations.” Available at <https://www.bls.gov/web/ecec/ececqrtn.pdf>. Accessed March 26, 2019.

²⁹ 1-hour time burden for importer to provide broker with information to verify the importer's identity for a new POA x \$29.76 hourly time value for importers = \$29.76 time cost.

submission requirement (*see* Table 4). In all, this rule would impose undiscounted costs of \$11.2 million on importers between 2019 and 2023, as illustrated in Table 4.

Table 4. Total Cost for Importers to Provide Identity-Verifying Data for Existing and New POAs with Rule (Undiscounted 2017 U.S. Dollars)

Year	Time Cost for Existing Importers to Provide Verifying Data for Existing POAs	Time Cost for New Importers to Provide Data for Verification	Total Time Cost for Importers to Provide data for Verification of Existing and New POAs
2019	\$3,472,010	\$148,800	\$3,620,810
2020	\$3,472,010	\$148,800	\$3,620,810
2021	\$3,471,980	\$148,800	\$3,620,810
2022	\$0	\$148,800	\$148,800
2023	\$0	\$148,800	\$148,800
Total	\$10,416,000	\$744,000	\$11,160,000

Brokers are required to obtain recent credit reports from their client importers for use in the verification process. We next estimate the cost of running credit reports to the importer. It is common practice among businesses to periodically run their own credit report, so we expect most importers to simply provide the broker with a previously run credit report. For the purposes of this analysis, we again assume that 95% of importers are already providing their credit report to the broker or that they routinely run their own credit report for their own purposes. There is not a financial cost to these importers.³⁰ The remaining 5 percent or approximately 5,000 importers will incur a costs by purchasing credit reports with credit scores from each of the credit bureaus (Equifax, Experian, and Transunion). The three reports costs

³⁰ Source: Communication with CBP's Broker Management Branch on March 23, 2019, and numerous conversations with the trade in August 2017. During the March 23, 2019 discussion with the Broker Management Branch, the branch noted that there can be a cost to brokers for collecting credit reports that range between \$35 to \$50 depending on the source.

approximately \$40.³¹ Table 5 shows the costs to importers working with brokers not currently accessing free credit reports from their clients.

**Table 5. Cost of Credit Report for Importers
(Undiscounted 2017 U.S. Dollars)**

Year	New POAs Requiring Identity-Verification	Credit Report Costs
2019	5,000	\$200,000
2020	5,000	\$200,000
2021	5,000	\$200,000
2022	5,000	\$200,000
2023	5,000	\$200,000
Total	25,000	\$1,000,000

Total Costs

Table 6 summarizes the costs of this rule to brokers and importers. Altogether, this rule would impose a total undiscounted cost of \$57.9 million on the trade community from 2019 to 2023.

**Table 6. Total Cost of Rule to Brokers and Importers
(Undiscounted 2017 U.S. Dollars)**

Year	Total Cost of Importer ID Rule
2019	\$11,062,430
2020	\$13,666,437
2021	\$16,270,355
2022	\$8,458,400
2023	\$8,458,400
Total	\$57,916,022

³¹ Source: Experian. Consumer Products. <https://www.experian.com/consumer-products/experian-equifax-transunion-credit-report-and-score.html>. Accessed March 27, 2019.

When discounted, as shown in Table 7, this cost would measure \$51.4 million in present value and \$11.7 million on an annualized basis (using a 7 percent discount rate and 2017 U.S. dollars).

Table 7. Total Monetized Present Value and Annualized Costs of Rule, 2019-2023 (2017 U.S. Dollars)

	3% Discount Rate	7% Discount Rate
Present Value Cost	\$54,922,999	\$51,403,406
Annualized Cost	\$11,643,386	\$11,716,647

Note: The estimates in this table are contingent upon CBP's projections as well as the discount rates applied.

5. Benefits

Most brokers are already verifying the identity of their prospective clients when they begin their business relationship, but there are some who do not. Based on conversations with the broker community, CBP estimates that five percent of importers' identities are not currently verified or are only minimally verified. Those who do not wish to be thoroughly verified sometimes "broker shop" for a broker that does not require the same amount of verifying information. While some importers simply do not want to share more information with their brokers than is required, others intend to commit fraud and import illicit and/or counterfeit goods into the United States. These fraudulent importers seek out brokers who do not ask for verifying information in order to use a shell or shelf company to import fraudulent goods into the United States. When the customs broker or CBP discovers the illegal activities and attempts to penalize the shell or shelf company, it disappears. By formalizing the verification process for importers and requiring that it be carried out every year, this proposed rule would help prevent the use of shell or shelf companies by importers who attempt to commit fraud against the United States.

The fraud this proposed rule is intended to prevent can take a number of forms. It can range from misclassifying merchandise to avoid duties to intellectual property rights (IPR) violations, to antidumping/countervailing duty (AD/CVD) infractions, to the importation of

unsafe merchandise. CBP believes that this proposed rule would improve brokers' knowledge of the importers. This improved broker knowledge could allow for commercial fraud prevention and revenue protection. According to CBP's Broker Management Branch, from approximately 2007 to 2017, there was about \$3.3 billion in uncollected duties related to AD/CVD violations by shell companies. Fifteen percent of these business entities are out of business. Their business model is to open, import merchandise subject to AD/CVD for a short period of time, and then shut down operations and disappear to avoid paying the required duties.³² As CBP cannot find the party responsible for importing, the duties can remain unpaid forever. Similarly, these shell companies frequently engage in the trade of counterfeit and pirated goods. The Organization for Economic Cooperation and Development estimates that counterfeit and pirated products accounted for as much as \$461 billion dollars in world trade in 2013.³³ This proposed rule will help prevent companies from engaging in these types of fraud because they will need to share real, verified information with their broker, which will make it much more difficult for those liable to disappear.

When shell or shelf companies importing goods into the United States do disappear before paying outstanding customs bills for duties, taxes and fees, CBP must collect the outstanding debt from sureties who issue bonds for the imported merchandise. The amount of duties, taxes, and fees that CBP may collect from sureties is limited by the value of the bond. In some instances, the bond value is insufficient to cover all outstanding duties, taxes, and fees owed by the importer. Consequently, there is a loss of revenue for CBP. At the same time, sureties incur additional costs to cover the duties, taxes, and fees collected against the bonds.

³² Source: Email correspondent with CBP's Broker Management Branch on April 20 2018.

³³ Source: Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact. Accessed April 25, 2018. <http://www.oecd.org/industry/global-trade-in-fake-goods-worth-nearly-half-a-trillion-dollars-a-year.htm>.

This proposed rule will allow brokers to more effectively vet importers and reduce the number of bad actors. This will decrease revenue loss for the government and reduce costs incurred by sureties.

Reducing fraud by shell or shelf companies is a benefit to all parts of the economy. The United States Government would benefit by collecting the appropriate revenue for imported merchandise. To the extent that it avoids fruitless enforcement actions against shell or shelf companies that disappear, it would also save on enforcement costs. Brokers would benefit as they would have better knowledge of their importers and would be better able to avoid engaging in business with fraudulent companies. Brokers would also benefit through the leveling of the playing field in obtaining new clients or retaining current clients. Currently, brokers who properly verify their importer client's identity when the POA is obtained incur costs verifying the importer's identity and can lose customers to brokers who do not ask importers for information to verify their identity. This proposed rule would eliminate the opportunity to "broker shop" for a broker that does not require as much identifying information from the importers. The larger trade community would benefit from this proposed rule as it would reduce identity theft, the number of counterfeit or IPR-violative imports, and it would help enforce AD/CVD laws. The American public would benefit through any reduction in unsafe merchandise that results from this proposed rule. Finally, this proposed rule fulfills the congressional mandate in TFTEA that CBP issue regulations governing the broker identification of importers.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This proposed rule will affect all customs brokers and IORs. The vast majority of customs brokers and importers are small businesses, so this rule would have an impact on a substantial number of small entities. However, these impacts will not be significant. As stated above, as a result of this rule, brokers would need to collect identity-verifying information from both their existing importer clients and prospective importer clients within three years of the effective date of this proposed rule being finalized.³⁴ CBP estimates that the monetized value of time spent by importers to provide this data costs \$29.76 per POA. Additionally about five percent of importers not currently working with brokers requesting credit reports with scores might incur a \$40 fee, as noted above. CBP does not consider the time cost of \$29.76 and possibly a \$40 fee to be a significant cost to importers. It is possible that some importers may have more than one IOR number and therefore more than one POA where their identity would need to be verified, but that is less likely for small businesses. We note that even in an extreme case where a small business has 10 POAs for each of its IOR numbers, the time cost would be only \$297.60 (or even less if there are efficiencies in submitting similar information multiple

³⁴ For any existing client with a POA issued by a partnership, the broker also must verify the client's identity. Existing clients with partnership POAs will need to have their identities verified within two years from the effective date of this proposed rule being finalized and reverified every year thereafter. However, according to subject matter experts from CBP's Broker Management Branch, partnership POAs represent less than 1% of active POAs, though we lack data on the precise number of partnership POAs. To the extent partnership POAs are affected, it will increase broker costs by a small amount.

times) with a possible \$40 credit report fee, which CBP also does not consider a significant impact.

Brokers would incur costs associated with verifying their importer client's identity whether they are prospective or existing clients. Above, as seen in Tables 2 and 3 we estimate that in the most costly year (2021), 2,093 permitted brokers bear total costs of \$12,449,635 for an average of \$5,948.22 per permitted broker. However, it is unlikely that the burden is spread evenly among brokers; those with more clients would need to verify more importer clients' identities, so their costs would be higher. To estimate the burden per broker and to assess whether the burden is significant, we will go through the following steps:

- Estimate the number of small brokers in various revenue categories.
- Per each category of brokers, estimate the additional number of POAs for which brokers will need to verify the importer client's identity.
- Estimate the cost per permitted broker of these verifications.
- Estimate the ratio of costs to annual revenue to assess whether the costs are significant.

To estimate the number of small brokers in different size categories, we use data from the U.S. Census Bureau. The U.S. Census Bureau categorizes customs brokers under the North American Industry Classification System (NAICS) code 488510, which also includes other businesses such as freight forwarders.³⁵ The Small Business Administration (SBA) considers a business entity classified under the 488510 NAICS code as small if it has less than \$15 million in

³⁵ Source: U.S. Census. <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=488510&search=2012%20NAICS%20Search>. Accessed August 8, 2018.

annual receipts.³⁶ As shown in Table 8, 95 percent of businesses classified under this NAICS code are small businesses. For the purposes of this analysis, we will assume that all brokers are small businesses. To the extent some are not, the impact on small businesses will be smaller than estimated in this analysis. We estimate the number of firms in each revenue category by allocating the 2,093 permitted brokers proportionally to the number of total firms in the NAICS code.

Table 8. Business Entity Data for NAICS Code 488510

Annual Revenue (\$) (Midpoint)	Number of Firms	Small	Estimated Number of Permitted Brokers
<100,000 (50,000)	2,195	Yes	323
100,000-499,999 (300,000)	4,935	Yes	727
500,000-999,999 (750,000)	2,330	Yes	343
1,000,000-2,499,999 (1,750,000)	2,429	Yes	358
2,500,000-4,999,999 (3,750,000)	1,208	Yes	178
5,000,000-7,499,999 (6,250,000)	540	Yes	80
7,500,000-9,999,999 (8,750,000)	284	Yes	42
10,000,000-14,999,999 (12,500,000)	282	Yes	42
>15,000,000	815	No	0
Total	15,018	(14,203/ 15,018)*	2093

Source: US Census Bureau.2012 SUSB Annual Data Tables by Establishment Industry. <https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html>

*95 percent are small

Now that we have estimated the number of permitted brokers in each size category, we estimate how much of each type of IOR verification will be done by brokers in each category. We use total annual revenue as a proxy for the number of clients (IORs) each broker has. While cases may exist where a broker generates a lot of revenue from just a few IORs or conversely that a broker generates little revenue from many IORs, on average we expect that the number of clients is well correlated with the broker's revenue. To estimate total revenue for each size

³⁶ Source: U.S. Small Business Administration. Table of Small Business Size Standards Matched to North American Industry Classification System Codes. https://www.sba.gov/sites/default/files/files/Size_Standards_Table_2017.pdf. Accessed March 21, 2019.

category, we use the category's revenue midpoint. We determine the different types of client identities that need to be verified as existing importer clients; clients that need their POAs, information and records to be annually reverified and updated; and prospective clients, and we allocate these to the different types of POAs (existing POAs requiring identity-verification, POAs needing annual verification, and new POAs needing identity-verification) proportionally to the total revenue for each size category. Table 9 shows the number of brokers in each revenue category, their total revenue, and the number of each type of POA for which the brokers would need to verify the importer client's identity under this proposed rule. Note that we present estimates for 2021, which is the most costly year for brokers.

Table 9. POAs By Size Category in 2021

Annual Revenue (\$) (Midpoint)	Estimated Number of Brokers	Total Revenue (000')	Existing POAs	POAs Requiring Annual Reverification	New POAs Requiring Verification
<100,000 (50,000)	323	\$16,150	593	1,186	25
100,000-499,999 (300,000)	727	\$218,100	8,007	16,013	343
500,000-999,999 (750,000)	343	\$257,250	9,444	18,888	405
1,000,000-2,499,999 (1,750,000)	358	\$626,500	22,999	45,999	986
2,500,000-4,999,999 (3,750,000)	178	\$667,500	24,504	49,009	1,050
5,000,000-7,499,999 (6,250,000)	80	\$500,000	18,355	36,711	787
7,500,000-9,999,999 (8,750,000)	42	\$367,500	13,491	26,982	578
10,000,000-14,999,999 (12,500,000)	42	\$525,000	19,273	38,546	826
Total	2,093	\$3,178,000	116,667	233,334	5,000

We next estimate the costs per broker. In the analysis above, we estimated that the cost per verification for existing clients' identities for each POA and the initial verification of the prospective client's identity for new POAs was each \$59.52. Additionally, as shown in the analysis above, the cost for each reverification of the client's identity was \$22.32. We multiply these costs to the number of POAs from Table 9 to reach the total costs for each broker category, shown in Table 10 below.

Table 10. Broker Costs By Size Category in 2021

Annual Revenue (\$) (Midpoint)	Cost For Existing POAs	Cost For Annual Revalidation	Cost For New POAs Requiring Verification	Total Cost
<100,000 (50,000)	\$35,288	\$26,466	\$1,512	\$63,267
100,000-499,999 (300,000)	\$476,555	\$357,416	\$20,424	\$854,394
500,000-999,999 (750,000)	\$562,099	\$421,574	\$24,090	\$1,007,762
1,000,000-2,499,999 (1,750,000)	\$1,368,920	\$1,026,690	\$58,668	\$2,454,278
2,500,000-4,999,999 (3,750,000)	\$1,458,506	\$1,093,880	\$62,507	\$2,614,893
5,000,000-7,499,999 (6,250,000)	\$1,092,514	\$819,386	\$46,822	\$1,958,722
7,500,000-9,999,999 (8,750,000)	\$802,998	\$602,248	\$34,414	\$1,439,660
10,000,000-14,999,999 (12,500,000)	\$1,147,140	\$860,355	\$49,163	\$2,056,658
Total	\$6,944,020	\$5,208,015	\$297,600	\$12,449,635

We next calculate the cost per broker and assess whether it is a significant impact. To calculate the cost per broker for each size category, we simply divide the total cost for the category from Table 10 by the number of brokers in it. Then we compare the cost per broker by the revenue per broker (again using the midpoint for each range) to assess whether the costs significant. The results are presented in Table 11. As shown, the costs are about 0.4 percent of revenue. CBP does not consider this to be significant.

Table 11. Costs per Broker in 2021

Annual Revenue (\$) (Midpoint)	Estimated Number of Brokers	Total Cost	Cost Per Broker	Cost to Revenue Ratio
<100,000 (50,000)	323	\$63,267	\$195.87	0.004
100,000-499,999 (300,000)	727	\$854,394	\$1,175.23	0.004
500,000-999,999 (750,000)	343	\$1,007,762	\$2,938.08	0.004
1,000,000-2,499,999 (1,750,000)	358	\$2,454,278	\$6,855.53	0.004
2,500,000-4,999,999 (3,750,000)	178	\$2,614,893	\$14,690.41	0.004
5,000,000-7,499,999 (6,250,000)	80	\$1,958,722	\$24,484.02	0.004
7,500,000-9,999,999 (8,750,000)	42	\$1,439,660	\$34,277.63	0.004
10,000,000-14,999,999 (12,500,000)	42	\$2,056,658	\$48,968.04	0.004
Total	2,093	\$12,449,635	\$5,948.22	

In summary, this proposed rule would affect a substantial number of importers and brokers. However, the costs do not rise to the level of economic significance. Therefore, CBP certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. CBP welcomes comments on this conclusion and any additional data.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information and recordkeeping requirements related to this NPRM will be submitted for approval by OMB under a revision and extension of collection number 1651-0034 (CBP Regulations Pertaining to Customs Brokers). The likely respondents are importers and customs brokers.

Customs Brokers Verification burden:

Number of respondents: 121,667

Number of Responses per Respondent: 1

Total Number of Responses: 121,667

Time per Response: 2 hours

Total Annual Burden Hours: 243,334

The estimated total annual burden associated with the collection of information in this NPRM is 243,334 hours.

VII. Signing Authority

This document is being issued in accordance with 19 CFR 0.1(b)(1), which provides that the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority to prescribe and approve regulations relating to customs revenue functions on behalf of the Secretary of the Treasury for when the subject matter is not listed as provided by Treasury Department Order No. 100-16. Accordingly, this proposed rule to amend such regulations may be signed by the Secretary of Homeland Security (or his or her delegate).

VIII. List of Subjects

19 CFR Part 111

Administrative practice and procedure, Brokers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth above, CBP proposes to amend 19 CFR part 111 as set forth below:

PART 111 – CUSTOMS BROKERS

1. The general authority citation for part 111 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

2. Add § 111.43 to read as follows:

§ 111.43 Importer identity verification.

(a) *Scope.* This section sets forth the minimum requirements for importer and nonresident importer clients to provide information and for customs brokers to collect, verify, and maintain information about the identities of their resident and nonresident importer clients. The customs broker must collect certain information from the importer client when the importer client provides the customs broker with a power of attorney and the customs broker must verify all of the information collected before the broker may transact customs business on behalf of that client.

(b) *Definitions.* (1) *Importer and nonresident importer.* For purposes of this section, “importer” is defined as one of the parties qualifying as an importer of record under 19 U.S.C. 1484(a)(2)(B). “Nonresident importer” is defined as an importer of record that is not a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; or a partnership, corporation, or other commercial entity that is not organized under the laws of a jurisdiction within the customs territory of the United States (as such term is defined in General Note 2 of the Harmonized Tariff Schedule of the United States) or in the Virgin Islands of the United States.

(2) *Client.* For purposes of this section, the “client” is defined as the importer or nonresident importer of record who is seeking or employing the services of a customs broker to transact customs business on behalf of the importer or nonresident importer of record.

(3) *Grantor.* For purposes of this section, the “grantor” is defined as the individual executing the power of attorney on behalf of the client.

(c) *Minimum information that the customs broker must collect from the client.* The customs broker must collect, at minimum, the following information, if applicable, from the client to allow the customs broker to verify the client’s identity when the customs broker, as required by §141.46 of this chapter, obtains a power of attorney:

- (1) The client’s name;
- (2) For a client who is an individual, the client’s date of birth;
- (3) For a client that is a partnership, corporation, or association, the grantor’s date of birth;
- (4) For a client that is a partnership, corporation, or association, the client’s trade or fictitious names;
- (5) The address of the client’s physical location (for a client that is a partnership, corporation, or association, the physical location would be the client’s headquarters) and telephone number;
- (6) The client’s email address and business website;
- (7) A copy of the grantor’s unexpired government-issued photo identification;
- (8) The client’s Internal Revenue Service (IRS) number, employer identification number (EIN), or importer of record (IOR) number;

- (9) The client's publicly available business identification number;
- (10) A recent credit report;
- (11) A copy of the client's business registration and license with state authorities;

and

- (12) The grantor's authorization to execute power of attorney on behalf of client.

(d) *Verification of information by customs broker.* Before transacting customs business on behalf of a client, the customs broker must authenticate the client's identity by verifying all the information collected from the client pursuant to paragraph (c) of this section. The customs broker must verify all the information collected from the client or the inapplicability of the information to that client. The customs broker also must check to determine whether the client is named as a sanctioned or restricted person or entity by the U.S. Government, or if the client is suspended or debarred from doing business with the U.S. Government. The means of verification are at the customs broker's discretion; however, the broker must use as many of the recommended verification means as necessary to be reasonably certain as to the client's identity. These means include:

- (1) A check of the appropriate websites to determine whether the client is named as a sanctioned or restricted person or entity by the U.S. Government, or if the client is suspended or debarred from doing business with the U.S. Government;
- (2) An in-person review of the grantor's government-issued photo identification;
- (3) An in-person client meeting;
- (4) An in-person visit of the client's place of business;
- (5) A review of the client's Articles of Incorporation;

(6) A query of publicly available information, business information and credit reporting entities, Federal, state, and local databases or websites and any other relevant trade or business sources.

(e) *Establishment of policies, procedures and internal controls.* All customs brokers must implement policies, procedures, and internal controls to identify and verify a client's identity before transacting customs business on behalf of that client. The policies, procedures, and internal controls must also fulfill the recordkeeping requirements in paragraph (f) of this section, particularly the requirement for updating information and records, and reverifying the client's identity.

(f) *Recordkeeping.* All customs brokers must make, retain, and update records containing the required information used to identify and to verify the client's identity.

(1) *Identification records.* At a minimum, customs brokers must retain any information collected pursuant to paragraph (c) of this section, including any identifying information presented to the customs broker, as well as any certifications the client has made.

(2) *Verification records.* At a minimum, customs brokers must retain descriptions of any documents relied upon, any non-documentary methods relied upon, any results of measures undertaken, and any resolution of discrepancies used to verify the client's identity as required by paragraph (d) of this section. The verification records must indicate which information collected pursuant to paragraph (c) was verified, who performed the verification, and the date the verification was performed.

(3) *Compliance with other recordkeeping provisions.* All customs brokers must comply with the recordkeeping provisions of this part, part 141 of this chapter, and part 163 of this chapter. The identification and verification records must be retained and made available

upon request for CBP examination in accordance with parts 111, 141, and 163 of this chapter.

The required retention period for the identification and verification records is the same period as is required for a power of attorney in §§ 111.23 and 163.4 of this chapter.

(4) *Updating information.* All customs brokers must implement procedures to update the records required in this section and to reverify the information collected from the client pursuant to the procedures set forth in paragraph (d) annually to ensure that the information is accurate, timely, and complete.

(g) *Penalties for noncompliance.* Failure to collect, verify, secure, retain, update, or make available for inspection the information required in this section is grounds for a monetary penalty to be assessed against the customs broker not to exceed \$10,000 per client in accordance with 19 U.S.C. 1641(d)(2)(A), or revocation or suspension of the customs broker's license or permit in accordance with 19 U.S.C. 1641(d)(2)(B).

(h) *Timing of verifications.* (1) *Prospective clients.* For all prospective clients, customs brokers must verify the information required in this section before the customs broker may begin to transact customs business on behalf of that client. The customs broker must comply with all the requirements in this section for that client including updating all records and information.

(2) *Existing clients.* For existing clients with a power of attorney issued by a partnership, customs brokers must, within two years of the final rule being effective, update and verify the information required in this section. For all other existing clients, customs brokers must, within three years of the final rule being effective, update and verify the information required in this section. By these dates, the customs broker must have complied with all the requirements in this section, including the updating of all records and information, and must continue to comply.

(3) *Reverification.* Reverification must occur annually after the initial verification required by this section.

Dated: August 6, 2019

Kevin K. McAleenan,
Acting Secretary.

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